

SENATE BILL REPORT

SB 6056

As Reported by Senate Committee On:
Government Operations, Tribal Relations & Elections, February 2, 2012

Title: An act relating to legal defense funds of candidates and public officials.

Brief Description: Concerning legal defense funds of candidates and public officials.

Sponsors: Senators Swecker, Pridemore and Shin.

Brief History:

Committee Activity: Government Operations, Tribal Relations & Elections: 1/31/12, 2/02/12 [DPS].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 6056 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pridemore, Chair; Prentice, Vice Chair; Swecker, Ranking Minority Member; Benton, Chase and Nelson.

Staff: Sharon Swanson (786-7447)

Background: In 1972 the voters passed Initiative 276, which required the disclosure of campaign finances, lobbyist activities, financial affairs of elective officers and candidates, and access to public records. The initiative created the Public Disclosure Commission (PDC), a five-member bipartisan citizen commission, to enforce the provisions of the campaign finance disclosure law. PDC has the authority to develop procedures, adopt rules, investigate complaints, and enforce the laws relating to campaign disclosure and contributions, including the imposing of civil penalties.

Legal defense funds are typically used to defray legal costs if the person becomes subject to civil, criminal, or administrative proceedings during a campaign; in an electoral context; or in the performance of their public duties.

Summary of Bill (Recommended Substitute): The Legal Defense Funds Act constitutes the sole authority for soliciting or accepting donations to a separate legal defense fund created by or for a candidate or public official. A legal defense fund may be established by

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any candidate or public official. A legal defense fund may be established only when the candidate or public official becomes subject to civil, criminal, or administrative proceedings during a campaign; in the electoral context; or in the performance of a public official's duties when those attorneys' fees and costs are not paid for at public expense.

A legal defense fund may be established only upon:

- the commencement of a formal action against the candidate or public official in a judicial or administrative forum for activities related to the candidate's or public official's campaign or public duties; or
- the commencement of an investigation by a public agency for activities related to the candidate's or public official's campaign or public duties and where the candidate or public official is the respondent.

Legal defense funds may be used only for the proceedings and investigations and for administrative costs associated with administering the fund and complying with provisions that govern legal defense funds.

A candidate or public official may have no more than one legal defense fund.

A candidate or public official who establishes a legal defense fund must appoint a legally competent person to serve as trustee to administer the fund. A candidate or public official may not serve as trustee for his or her legal defense fund. Only the trustee or a committee member acting at the direction of the trustee is authorized to make expenditures from the fund. The trustee of a fund established for a public official who is an employee of the legislative branch or of the Office of the Governor cannot be a registered lobbyist or lobbyist employer.

A legal defense fund shall be disclosed on reporting forms provided by the PDC.

No person may give, and no candidate or public official may accept, more than \$1,000 per calendar year per person as donations to any legal defense fund of a candidate or public official. No candidate or public official may accept an anonymous donation or knowingly accept a donation that does not accurately provide the identity of the original donator. Funds raised are limited to the amount reasonably necessary to defray the attorneys' fees and other legal costs related to the litigation or investigation for which the fund was created.

A candidate may use campaign contributions for expenditures for ballot counting, including for recounts.

The surplus funds of a candidate or a candidate's authorized committee may be, with the written permission of the contributors, transferred to a separate account established solely as a legal defense fund. The amount each person can donate either directly or indirectly or as a transfer of that person's campaign contribution is limited to \$1,000 per calendar year per person.

After litigation concludes, surplus legal defense funds may be disposed of by the following methods:

- returning the surplus to a donator in an amount not to exceed the donator's original donation;
- donate the surplus to a charitable organization registered under RCW 19.09;
- transmit the surplus to the State Treasurer for deposit in the General Fund, the Washington State legacy project, State Library, and archives account or the legislative international trade account;
- transmit the surplus to the Washington State Bar Association for the lawyers fund for client protection.

Donation means a payment, loan, gift, deposit, subscription, forgiveness of indebtedness, advance, pledge, transfer of funds, or anything else of value, including personal and professional services for less than full consideration. The following are not considered donations to legal defense funds:

- legal services payments made directly to the law firm by the candidate or public official or by the candidate's or public official's immediate family member, and that are not donated to the legal defense fund; or
- legal services provided to an elected official or public officer when those services are authorized or required by law.

A legal defense fund means a separate account established by a candidate or public official to defray attorneys' fees and other legal costs incurred for the candidate's or public official's legal defense.

Public official means a person required to file a statement of financial affairs, including elected officials, persons appointed to a vacancy in an elected office, and executive state officers.

EFFECT OF CHANGES MADE BY GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS COMMITTEE (Recommended Substitute): Technical change to correct inconsistency. No substantive effect.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: This is a bill that has been worked on by a workgroup for quite sometime. Many jurisdictions, including the federal government, have requirements for public officials or candidates to establish a legal defense funds. This bill has been developed with input from the Legislative Ethics Board, the Executive Ethics Board, and the Commission on Judicial Conduct as a workgroup. The requirements in the bill have been developed to keep funds separate and to continue to have transparency as to donors and contribution amounts.

Persons Testifying: PRO: Andrea McNamara-Doyle, Public Disclosure Commission; Nancy Krier, Public Disclosure Commission.